the matter to the notice of his superior officers he can be prevailed upon to perform a statutory duty. But I agree with the learned trial judge that in the circumstances of the case no other remedy was open to the applicants. This decision is in accordance with the rule suggested in Short and Mellor, at page 205, which reads as follows:—

> "When a subordinate has a statutory duty cast upon him to the public at large mandamus will lie against him at the suit of one of the public, especially if he is supported and upheld by his masters."

For the above reasons I am of opinion that all the conditions necessary for the granting of a writ of mandamus were present, and that the discretion of the Court was properly exercised in favour of the applicants.

As to the form of the Rule Absolute, the Court is not asked to find that the Harbour Master has exercised his discretion on the wrong grounds, as in the present case he has not exercised his discretion at all. I agree therefore with the variation in the final order suggested by the learned Chief Justice.

I would dismiss the appeal with costs.

Appeal dismissed.

Solicitors for the Respondents—*Adams & Allan.*

[APPELLATE CIVIL JURISDICTION]

LYE BOON HONG & ANOR.....Plaintiffs (Appellants)

vs.

ISHIHARA SANGYO KAIUN GOSHI KAISHA.....Defendants (Respondents)

[JOHORE CIVIL APPEAL No. 7 OF 1932]

[BATU PAHAT CIVIL SUIT No. 1 OF 1932]

Practice—Memorandum of Appeal—objections in point of law or of fact to be specifically raised—rejection of appeal.

Unless the grounds of objection to the decision appealed against specify the points of law or fact alleged to have been wrongly decided, the appeal may be rejected or adjourned till the next sitting and the appellant will be ordered to pay costs of the appeal or of the day.

MOTION for the rejection of the Memorandum of Appeal filed by the Appellants in this case and for the dismissal of the appeal on the ground *inter alia* that the grounds of objection to the decision appealed from were not stated with particularity in the Memorandum of Appeal.

The reasons set forth were as follows:—

1. The learned Judge was wrong in law.
2. The facts do not support the finding of the learned Judge.
2. Such findings of facts as were found by the learned Judge were based on erroneous deductions from the evidence before the Court.
4. The judgment was against the weight of evidence.

The motion came on for hearing before Murison, C.J., and Terrell, J.

Spenser-Wilkinson, for the Respondents.

M. V. Pillai, for the Appellants.

The Court of Appeal consisting of Murison, C.J. and Terrell, J. after hearing the arguments on both sides, dismissed the motion but allowed the appellants the costs of the motion. The following Memorandum relating to the practice as to the contents of Memoranda of Appeal in future was read by Sir William Murison—

> "We desire to say that the practice prevailing in Singapore as to the contents of memoranda of appeal in civil and criminal cases will in future be enforced in Johore.
>
> "It is as follows:—Where the appellant is represented by Counsel, the memorandum must contain definite particulars of the points of law or fact in regard to which the trial judge is alleged to have erred.
>
> "If these requirements are not complied with the appeal may be rejected or adjourned till the next sitting and the appellant will be ordered to pay the costs of the appeal or the costs of the day as the case may be.
>
> "Where the appellant is not represented by counsel the formal allegation that the trial judge has erred in law and fact or either will be accepted, without the particulars above-mentioned."

Solicitors for the Appellants—*Pillai & Co.*

Solicitors for the Respondents—

Donaldson & Burkinshaw.

[ORIGINAL CIVIL JURISDICTION.]

In the matter of the Will of Chia Yew Siang (also known as Chia Bok Tong) deceased dated the 7th day of May, 1930.

CHIA CHIEW NEO (SPINSTER)

vs.

TAN THIAN CHYE AND ANOTHER.

[SINGAPORE CIVIL SUIT No. 699 OF 1932.]

Will—Trust for sale—Discretion to postpone—share in residuary estate—vested interest in share at 21—right of beneficiary to insist on immediate payment.

By his Will the testator directed his trustees to pay certain monthly allowances for life to various persons and for such purpose to appropriate a fund out of his assets sufficient at the date of the appropriation to answer out of the income thereof the payment of the monthly

allowances and in the meantime to pay such monthly allowances out of the residuary estate. He further directed that the monthly allowances should after the appropriation of the fund aforesaid be payable out of the appropriated fund exclusively in exoneration of his other estate and such fund should subject to the payment of such monthly allowances form part of the residuary estate. The testator also bequeathed various legacies including certain sums for the funeral expenses of himself and his four secondary wives and for the marriage expenses of his eleven sons and daughters. Subject to the preceding provisions the testator gave the whole of his estate to his trustees upon trust to sell call in and convert into cash with full discretionary power to postpone such sale calling in and conversion and to hold the proceeds in trust for the payment of debts, funeral and marriage expenses, and allowances previously mentioned and the appropriation previously referred to and to invest it as his residuary estate and accumulate the income for 12 years from the date of his death. At the expiration of the period of 12 years the trustees were to divide the residuary estate into 32 shares and pay such shares to the various persons mentioned therein. Each legatee of the residuary estate was declared to have a vested interest in his or her share or shares at 21 with a gift over in case of death before 21.

The plaintiff was entitled to one share of the residuary estate.

The testator died on the 8th May, 1930.

The plaintiff having attained the age of 21 claimed that she was entitled to immediate payment of her share without waiting for the period of distribution to arrive. The defendants were sued as the executors of the Will of the deceased.

Held, that the plaintiff's share was not immediately payable and that until there was a sale and the proper appropriations were made, she would not get her share before the date of distribution indicated in the Will.

Re Horsmaill, (1909) 1 Ch. 631 and *In Re Kipping*, (1914) 1 Ch. 62 followed.

Order made by Murison, C.J. on the issue directed by Whitley, J. in this action.

The facts and arguments are related in the Judgment.

Johannes (Aubrey V. L. Davies with him). for the Plaintiff.

S. B. Tan for the Defendants.

Cur. Ad. Vult.

MURISON, C.J.—This is an issue directed by Whitley, J. to decide whether according to the true construction of the Will of one Chia Yew Siang, deceased, the Plaintiff and other beneficiaries mentioned in clause 12 of the said Will who have attained 21 years of age are entitled now to payment of their respective shares as mentioned in the said clause or whether such shares are payable at the date of distribution mentioned in the said Will.

The Plaintiff in the action and on this issue is a legatee under the Will. The Defendants are the executors and trustees of the Will.

The direction of trial of an issue in a matter of law seems unusual. I treat the matter, with the consent of all parties, as an application for the construction of the Will so far as the point mentioned is concerned.

The deceased died in Singapore on the 8th May, 1930. His Will dated the 7th May, 1930, was proved in Singapore by the two executors and trustees therein named, Tan Thian Chye and Chia Chee Sian.

By his Will the testator bequeaths various legacies including certain sums by way of funeral expenses for four secondary wives and provides $2,000 for his own funeral expenses. Eleven legacies follow for the marriage expenses of eleven sons and daughters, and another similar legacy for a nephew in China.

By clause 8 the trustees are directed to pay certain monthly allowances for life to various persons and for such payments to appropriate a fund out of his assets, the payments, until such appropriation is completed, to be made out of the residue of his estate.

Clause 10 provides for the upkeep of a family house and for repairs to it.

By Clause 12 the testator gives the whole of his estate subject to the preceding provisions to his trustees upon trust to sell call in and convert into cash (but with full discretion to postpone such sale, calling in or conversion) and to hold the proceeds in trust for payment of debts, funeral and marriage expenses and allowances previously mentioned and the appropriation previously referred to, and to invest it as his residuary estate and in trustee securities and to accumulate the income for 12 years from the date of his death. This date (8th May, 1942) is the date of distribution and when it arrives the 32 shares therein mentioned are to be paid. These include the Plaintiff's share.

By clause 13 these legatees are declared to have a vested interest in their shares at 21 with a gift over in case of death before 21.

Mr. Johannes for the Plaintiff in the issue claims that he has an indefeasible vested interest and is therefore entitled to payment at 21 without waiting for the period of distribution to arrive. This proposition is supported by *Saunders* v. *Vautier* (1841) 41 English Reports 482 and later cases such as *Gosling* v. *Gosling* (1859) 70 English Reports 423 and *Walton* v. *Masterman* (1895) A.C. 186. In the last-named case it was held by the House of Lords that where there is an absolute vested gift made payable at a future event, with direction to accumulate the income in the meantime and pay it with the principal, the Court will not enforce the trust for accumulation in which no person has any interest but the legatee: in other words the Court holds that a legatee may put an end to an accumulation which is exclusively for his benefit.

It is to be observed, however, that a condition of the rule is that there must be no person who has an interest in the gift.

Mr. Tan, for the trustees, raises two objections.

First he says (and this is not contradicted) there has been no appropriation in accordance with the directions of the Will to meet the various monthly legacies for life provided for in clause 8 of the Will. That being so, the annuities are chargeable on the whole estate and the Plaintiff's legacy therefore not being indefeasible, is not within the rule in *Saunders* v. *Vautier*.

So far as this point goes, these proceedings might be adjourned with a view to the proper appropriations being made, but this as it turns out would not assist the Plaintiff.

Mr. Tan's second point is that as the trustees have full discretion to postpone a sale and conversion there are no assets upon which the rule in *Saunders* v. *Vautier* can operate, for where land is demised to trustees upon trust for sale, with power to postpone, even a person who is indefeasibly entitled to a share of the proceeds of sale cannot insist on an immediate exercise of the trust for sale against the discretion of the trustees nor can he call for a conveyance of the land (Theobald, 8th edition pages 500-1). This is clearly laid down in *Re Horsmaill* (1909) 1 Ch. 631 and in *Re Kipping* (1914) 1 Ch. 62. In the latter case Buckley L.J. (at page 67) said of the applicant—" his contention is that the trustees are bound to sell because he has a right to a distributive share of the residuary estate and to be paid that share. He is not, in my opinion, so entitled. The Will gives him, not a distributive share of a sum of money, but a distributive share of the income of the property so long as it remains unsold, and a distributive share of the proceeds of sale when the property is sold. There is no gift of the proceeds of sale until the property is sold, and he is not entitled to interfere with the *bona fide* exercise by the trustees of their discretion and to call upon them to sell. There is no original gift to him under which he is entitled to have the property sold now."

For these reasons I am of opinion that the Plaintiff's contention must fail. As matters stand at present I hold that the Plaintiff's share is not immediately payable and that until circumstances alter that is until there is a sale and the proper appropriations are made, she cannot get her share before the date of distribution indicated in the Will.

As to costs I think upon the whole that the solicitor and client costs of the Plaintiff be paid as to half out of the estate and as to the other half out of the Plaintiff's share. As to the Defendants' costs a similar order will go except that if the Plaintiff's share is insufficient to pay the costs directed the residuary estate as a whole will bear them.

Order Accordingly.

Solicitors for the Plaintiff—*Aubrey Davies & Co.*
Solicitor for the Defendants—
Donaldson & Burkinshaw.

Note.—The plaintiff appealed against the whole of the judgment of Murison, C.J. The Court of Appeal consisting of Burton, Terrell and Whitley, JJ., unanimously dismissed the appeal on the 23rd of November, 1932.

[ORIGINAL CIVIL JURISDICTION.]

IN RE A SOLICITOR AND ADVOCATE
and
IN THE MATTER OF ORDINANCE No. 101 (COURTS)

[SINGAPORE ORIGINATING MOTION No. 9 OF 1932]

Solicitor—Change of—new Solicitor undertaking to pay former Solicitors' bill of costs—breach of undertaking—professional misconduct—contempt of Court—application to suspend—Sec. 91 (2) (b) Ordinance No. 101 (Courts.)

Where, on a change of Solicitors, the new Solicitor gave a written undertaking to pay the costs claimed to be due from the client to the former Solicitors, failure to honour the undertaking amounted to professional misconduct and a contempt of Court. That the defaulter had a cross complaint against the former Solicitors however genuine it might be would not affect the breach of the undertaking.

The personal undertaking of the Solicitor is sufficient to enable the Court to exercise its summary jurisdiction to compel him to carry out the undertaking on the application of the person to whom it is given.

In re a Solicitor, Ex parte Hales (1907) 2 K.B. 539 and *In re* F.C., (1888) W.N. 77 followed.

MOTION by the Singapore Bar Committee for an order that the Respondent do shew cause why he should not be suspended from practice as an Advocate and Solicitor. The facts appear from the Judgment of Murison, C.J.

Knowles, (*Withers-Payne* with him) for the Singapore Bar Committee.

Johannes, for the Respondent.

Cur. Ad. Vult.

MURISON, C.J.—This is a motion by Mr. Knowles, of counsel on the part of the Bar Committee of Singapore, for an order that the Solicitor and Advocate therein named show cause why he should not be suspended from practice.

The charges against the respondent to the motion are brought under section 91 (2) (b) of the Ordinance No. 101 (Courts). They are first that he has been guilty of improper conduct in regard to a sum of $100.30 arising out of certain dealings with Messrs. Campbell & Company, Advocates and Solicitors, and secondly by virtue of an agreement made by him in regard to costs of an action.

I deal with the first charge first.

On September 7th, 1931, the Respondent was instructed by one Kolandan to appear on his behalf in a District Court Summons in place of Messrs. John G. Campbell & Co., and on the same day the Respondent was instructed to appear on